No. 797. 867.

Reply Brf. of Parker, Parker & Hackett for D. C. (ma

Supreme Court of the United States.

OCTOBER TERM, 1896.

Filed May 10, 1897.

ANNA M. FORREST, Administratrix of SAMUEL FORREST, Deceased, and CHARLES BORCHERLING, Receiver, Defendants in Error, *vs.* RODMAN M. PRICE, MADELINE PRICE, and ALS., Plaintiffs in Error.	797 Brief by way of reply to brief of Plaintiffs in Error on motion to dismiss or affirm.

Counsel for Plaintiffs in Error allege two grounds of jurisdiction.

1. That the "Act for the relief of Rodman M. Price," the deceased father of the Plaintiffs in Error, provided a gratuity, and therefore that the money in the Treasury, about which the suit is brought, belongs to Plaintiffs in Error as his heirs.

2. That the money cannot lawfully go out of the Treasury to the receiver because under Section 3477 of the U. S. Revised Statutes it can only be assigned in the way therein specified.

Briefly consider these insistments.

I.

1. Defendants' brief shews (page 6–7) that Rodman M. Price, deceased, then a purser in the U. S. Navy advanced $75,000 to the United States and made claim for its repayment, which was refused, it would appear, on technical grounds.

The Act of Congress was passed to remedy this wrong,

and directed the Secretary of the Treasury to audit the claim on principles of equity and justice, and to pay Price or his heirs what he found due.

Instead of this being a gift or a gratuity, it was an acknowledgment by Congress of a debt, a direction to adjust its amount and discharge it. The Act construes itself. It said the United States owes Mr. Price—not so as to entitle him to bounty, but to justice.

Much less can the Act mean to make a gift to Price's heirs. Why to them? They might be collateral heirs. Could the Congress wish to benefit *them*, or could it wish to give money to Price's children? What have they done or he, to deserve it?

Plainly the Act contemplated that Price might die before, through adjustment, the amount of the debt was settled, and then, it directed, using technical words of succession, that his *representatives* should have the benefit of the Act, for adjustment and for payment.

Many acts of Congress use the word "heirs" as equivalent to "legal representatives." *Emerson* vs. *Hall*, 13 Peters, 409, construed an act declared by its title to be for the "relief of the heirs of Emerson, deceased," and which in its body directed payment to his legal representatives of a gratuity, to be intended for the benefit of the decedent's *heirs*, thereby showing a sometime use by Congress of the two phrases as synonymous—and giving effect to the title of the act rather than to the words of its body.

There could be no heirs till R. M. Price's death. *Could* the act have meant to pay them, instead of his legal representatives?

But, when Price died, the whole sum had been credited to him. (Plaintiff's brief, pp. 6–7.) It was then a debt due by the U. S. to him. After this, October 10, 1892, in her creditor's suit filed by defendants in error against Price, and after he, in disobedience to the injunction of chancery, had cashed the drafts for the greater part of it, and used the money, Charles Borcherling was appointed receiver of all

" property and things in action belonging to or due to or held in trust for him."

Thus, by act of law in New Jersey, this debt was assigned by Price in his lifetime to Borcherling as receiver, in trust for all creditors, after paying the Forrest debt.

This, we contend, left nothing for any one else to get—even giving the false meaning to the words " or his heirs," for which Plaintiff in Error contends there was nothing for them " to take"—Price, had, in law, taken it all.

The effect of this receivership, by the New Jersey Act and the order of the Court of Chancery, was to make this money, once due to Price, due thenceforth to the receiver. See Rev. St. N. Jersey, p. 121, and Chancery order mentioned in record and briefs.

And New Jersey decisions recognize the right of receivers in other States to sue for property here. *Hurd* v. *Elizabeth*, 12 Vroom, 1.

II.

As to the effect of Section 3477, it is clear

1. That it cannot apply, because the act applies only to voluntary assignments. Assignments by operation of law are not affected by it.

112 U. S., 733—*St. Paul & D. R. R. Co.* v. *United States*, cited by Plaintiffs in Error, held that a voluntary transfer begun by way of mortgage though *completed* by judicial sale, was void. But here the assignment is made by the law, not by the party, and the point in the case was that the mortgage was an assignment; that it was voluntary, and that the judicial decree only completed it. Said the Court, " if the statute does not apply to such cases, it would be difficult to draw a line of exclusion which leaves any place for the operation of the prohibition."

It is equally plain that the other cases on plaintiff's brief do not apply. The statute refers to voluntary assignments only.

Ought the court to be detained by a writ of error in this case?

III.

But, has the appeal been lawfully taken?

The Court of Errors and Appeals of New Jersey is composed of the chancellor, the justices of the Supreme Court and six associate judges. Of these the chancellor is president.

This, by the constitution.

But, by the constitution and the law in pursuance of it (see Brief for defendants in error, page 4), the chancellor is *not a member* of the court on appeal from his own decision. This fact plaintiffs' brief does not notice. In his absence, the chief justice, and in his, the senior justice is president of the court. It is not the chancellor then who was entitled to sign the citation in this case. The statute of the U. S. must rule.

CORTLANDT PARKER,
WAYNE PARKER,
FRANK W. HACKETT.

No. 105.

BRIEF FOR DEFENDANTS IN ERROR.

Brief of Parker, Parker & Hackett for D. E.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 105.

Filed Dec. 1, 1898.

ODMAN M. PRICE, MADELINE PRICE, GOVERNEUR PRICE, FRANCIS PRICE AND E. TRENCHARD PRICE, PLAINTIFFS IN ERROR,

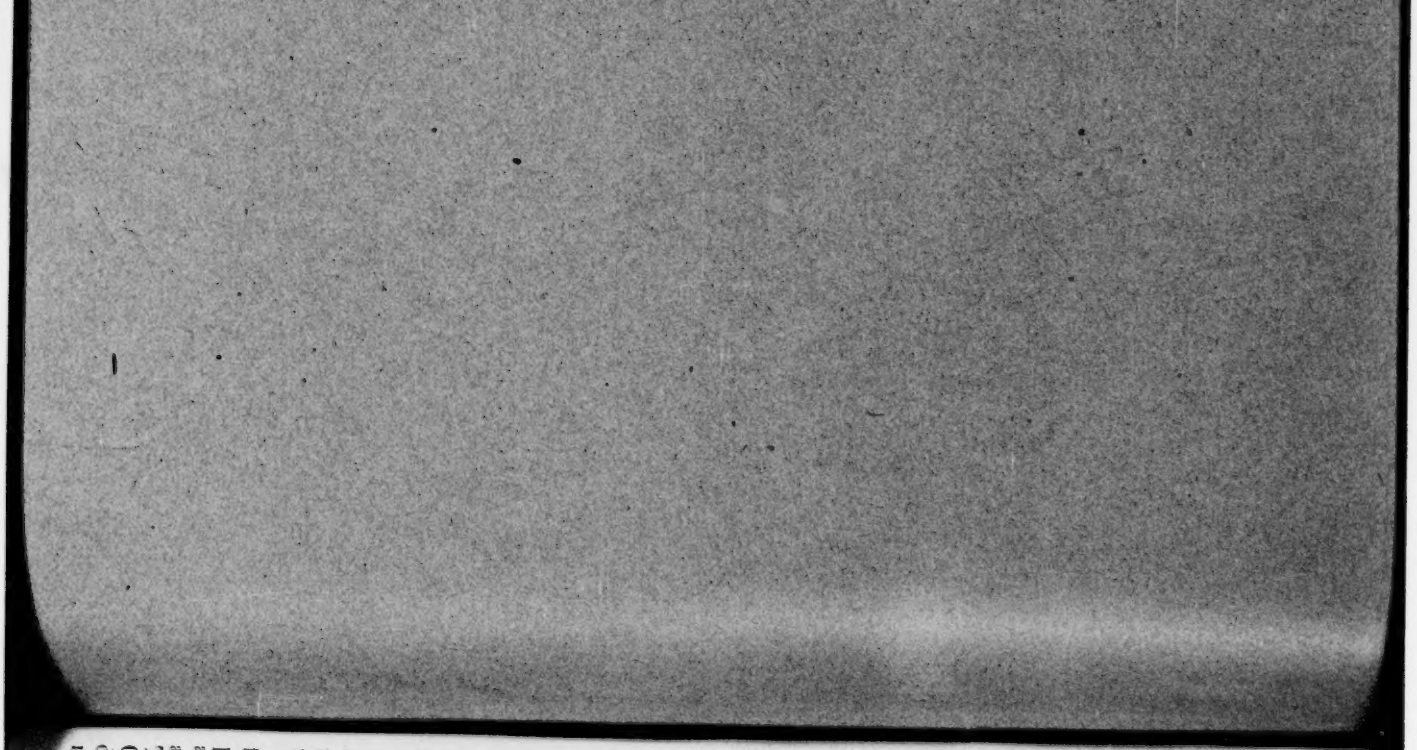
vs.

NNA M. FORREST AND CHARLES BORCHERLING, DEFENDANTS IN ERROR.

ERROR TO THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY.

CORTLANDT PARKER,
R. WAYNE PARKER,
FRANK W. HACKETT,
Of Counsel for Defendants in Error.

(16,576.)



Supreme Court of the United States

ANNA M. FORREST, ADMINISTRATRIX OF SAMUEL FORREST, DECEASED, AND CHARLES BORCHERLING, RECEIVER, ETC.,
Defendants in Error.

adsm.

RODMAN M. PRICE AND OTHERS, CHILDREN OF RODMAN M. PRICE, DECEASED,
Plaintiffs in Error.

On Writ of Error removing Decree of the Court of Errors and Appeals of the State of New Jersey.

The issue in this cause would seem to be a single one.

Mrs. Forrest filed her bill of revivor and supplement as administratrix of her husband, alleging that in the original cause Charles Borcherling was appointed Receiver of the property and things in action belonging or due to or held in trust for Rodman M. Price, deceased, at the time of issuing executions upon original and revived judgments, recited in the bill, or at any time afterwards, and especially was he appointed Receiver of four drafts therein mentioned, with power to possess, receive and sue for such property or things in action.

For the bill, see pages 11 to 23 of the printed record.

The bill further states (see the same pages) that there still remains in the Treasury of the United States about twenty-three thousand dollars to the credit of Rodman M. Price, being the remainder of a debt of $76,000 awarded to him, about $54,000 of which the said deceased, in contempt of the Court of Chancery of New Jersey, and of injunctions issued by it, had received from the treasury and applied to his own use; that the defendants, who are his children, are seeking to obtain this money, and the bill prays: 1st, revivor of the formal decree; 2d, an injunction against the defendants preventing them from demanding or receiving any of this remaining money; and 3d, that the defendants be ordered to pay over to Charles Borcherling, Receiver of the said Rodman M. Price, deceased, any part of said money which they respectively have received or may receive.

To this bill the defendants, children of Rodman M. Price, deceased, filed pleas. alike in form, by which an act of Congress is set out, approved February 23, 1891, and by which they assert that under this act they, as his heirs at law, are entitled to said money, and afterwards an answer setting up the same defense (see Record 25 to 37 and 42 to 68.) This writ of error comes to this Court because of the Decree of the Court of Errors and Appeals of New Jersey construing this act and decreeing according to the prayer of the complainants aforesaid above mentioned.

The act uses language directing the Secretary of the Treasury to "adjust, upon principles of equity and justice, the accounts of Rodman M. Price, late purser in the United States Navy, and acting Navy Agent at San Francisco, crediting him with the sum paid over to and receipted for by his successor January 14, 1850, and to pay to said Rodman M. Price or his heirs out of any money in the treasury, etc., any sum that may be found due upon such adjustment." The validity of this plea and subsequent answer was the subject of the controversy in the Court of Chancery below. The insistment of the defendants there in both pleadings was that, as heirs of Price, these moneys belonged to them; that the act contemplated a payment by the United States to Price or to his heirs; that the heirs were beneficiaries of the United States as such, and that the assignment by Price by virtue of the law of New Jersey, which made the appointment of the Receiver work such an assignment, did not pass this money.

It would seem that this insistment contends for an impossibility. The gift, if any, was made by the act of Congress and occurred at the time it passed; the language being to pay to Price or to his heirs could only be fulfilled by the payment to Price himself, for there could be no heirs till Price died; and so the argument and insistment of the appellants here must be that the act meant to say, "pay to said Price in his lifetime, or after his death to his heirs at law." On the part of the complainants, defendants in error here, the insistment is that the words "or his heirs" are simply words of succession and a description, so to speak, of Price's estate in the money. The thing dealt with is personalty, and so the words are used in the sense of "personal representatives," and the act simply by its language intended to secure the moneys to his estate in the event of his death before they are paid. Price died leaving children, who so became his heirs, but he might have had none. They might have died during the interval between the passage of the act and his own death. And then his heirs, that is the persons who would succeed to his lands, might be distant relations. What motive could lead Congress to contemplate a payment to distant connections such as might have occurred? This suggestion seems to me to demonstrate that the words, as we say, meant only the representatives of his estate, whoever they might be.

This case, in the lifetime of Price, was settled by the decree of the New Jersey Chancellor. The question was raised in the original suit and earnestly presented and argued. After careful consideration, it was decided by his honor, the present Chancellor, whose opinion on the subject will be found in the case of *Forrest* vs. *Price*, reported in 6 Dickinson's Reports, 25–26–27. The question has been also decided by the authorities in Washington. On the 11th day of July, 1894, the Comptroller of the United States delivered his written opinion upon the very question. It begins with saying that he was a member of Congress, voted for this act, participated in the debate which preceded it, had had to do with it in the Treasury Department, and is familiar with the origin of the claim, and all the facts that secured the passage of the act by Congress. And

then he says: "I am very clear in my own mind that it was not intended as a bounty to Mr. Price or his children, nor could it be Mr. Price thought in 1849 that he was acting within the meaning and construction of a certain law in regard to the appointment of acting pursers. As such he turned over to the acting purser who succeeded him a large amount of money and took his receipt for it, believing that he would be indemnified at the proper time by the Federal Government. I therefore think that the act of 1891 was based upon the idea that he held a fair, just, moral and equitable claim, if not technically legal, against the Government."

He then refers to the case of *Emerson* v. *Hall*, which is the case relied upon specially by the defendants, and he says, "In my opinion the case of *Emerson* v. *Hall* has no bearing whatever upon this case. In regard to the peculiar language of the act by the use of the words 'or heirs,' I find upon the examination of the law books that there have been a very large number of adjudications, probably a hundred, in the courts of the different States of the Union, as to their meaning in statutes as well as in various deeds and written obligations and other papers, as to what 'or' and 'and' mean, and I find that in nearly all the cases where either of these words, the conjunctive or disjunctive words 'and' or 'or' has been used, that it is almost universally without exception held that 'and' shall be construed 'or;' that 'or' shall be construed to mean 'and,' according to the fair meaning of law makers, gathered from the construction of the whole statute, and the circumstances that led up to the enactment of the statute. I therefore attach no special importance to the word 'or.' I believe that in fact the preferable word, under the circumstances, would have been the word 'and,' so as to conform to the old common law doctrine that the payment was to be made to Price and his heirs, meaning thereby that Price in his lifetime, if he lived long enough to consummate the settlement with the Federal Government, should obtain and take the money; if not, his heirs, according to the law of descent, take it under the laws of the domicile where Price lived at the time, and would be entitled in the ordinary way of descent to the amount." Further on he says: "I hold it therefore to be clear that after his death, if the word 'or' is to be construed 'and,' and if the subject matter of the act, the amount of money described in the act, is property, as I think it is, then the Court of equity having laid its power upon Mr. Price and obtained jurisdiction over this claim in New Jersey, that being the place of Price's domicile, his estate, this money included, would have to be distributed or descend according to the laws of the State of his domicile. I do not doubt but that it is within the power of a Court of Chancery to bring in all the heirs, hold them in the case, and proceed to adjudicate. And I apprehend, and I put it that way, without asserting it as a fixed fact, that while the Chancery Court would have the power to adjudge and decree as to the amount of money that might be due the plaintiff in the injunction, in the pending case, yet after its determination of the amount and judgment rendered, I apprehend the amount would have to be certified by judgment transcript to the Pro-

bate Court, and paid by the administrator or executor as a preferred claim in the Probate Court against the Price estate."

He then says: "I do not presume for a moment that the Chancery Court of New Jersey could issue an execution and compel the payment of this money, nor could any of its powers be brought to bear to compel, without at least additional legislation by Congress, the Comptroller to pay its judgment. But while that is true, yet on the other hand the Comptroller so far having awaited adjudication of that Chancery Court; ought to abide by the result of that litigation and await a final adjudication and certificate of the amount as to who are entitled under the laws of this State. This comes more from comity and from a disposition on the part of the Treasury officers to obey the laws of the land, and to help enforce the decrees of the Courts who have jurisdiction over matters in litigation of this kind, than from any actual authority that the Court may have over the Comptroller to compel him to make payment. In conclusion then, the Comptroller will not at this time act in this matter, but will say to the gentlemen that they must fight it out in the Courts of New Jersey, and that this Court will follow the final decision that may be rendered there."

The Comptroller in such a matter is a judicial officer, and it therefore appears that the only judicial authorities that could pass upon this act, have construed it according to the insistment of the complainants.

See the opinion of Chancellor McGill and that of the Comptroller of the Treasury, copied in the Appendix to this brief.

The case of the heirs of Emerson against Hall, 13 Peters 409, is cited as sanctioning defendant's plea. Emerson, Surveyor of the Port of New Orleans, with Chew, the Collector, and Lorraine, a naval officer, seized a brig for violating the law prohibiting the importation of slaves. At their sole expense, they instituted proceedings which resulted in the condemnation of the vessel and slaves. Money was raised by a sale, and these proceeds under the laws of the United States according to the decision of the Supreme Court, 10 Wheaton 331, could not be paid to these officers, but vested in the United States. Emerson died, leaving heirs. Thirteen years after the seizure, Congress passed an act entitled "An act for the relief of Chew and of the heirs of Emerson, and the heirs of Lorraine," 6 U. S. Stat. 464, and the preamble of the act stated that half of the proceeds would have been payable to these officers, but for an omission in the law. The question was whether the money appropriated to the heirs of Emerson was assets of his and liable to his debts. The Court held that Congress intended to pay the money directly to the heirs; that the act was not in recognition of a claim of Emerson having any foundation in law; that a benefit had been conferred on the Government, but this was not done at the request of any officer of the Government, nor under the sanction of any law or authority expressed or implied. The reasoning of the Court is that the claim of Emerson could not be enforced, but yet was a claim founded in equity and one which the Government ought to recognize. It was that the action of those officers was purely vol-

untary, not in the line of their duty, there being no obligation whatever on the part of Congress. The act evinces the purpose of Congress to make a gift to these parties. The Court held that there was no debt to the Government, that the act was simply a bounty on the part of Congress, and that under the statute the money had reached its proper destination. Says Mr. Justice McLean, delivering the opinion of the Court, "The Government might have directed the money to be paid to the creditors of Emerson, or to any part of his heirs. Being the donor, it could, in the exercise of its discretion, make such distribution or application of its bounty as circumstances might require, and it has, under the title of "An act for the relief of Emerson," directed in the body of the act the money to be paid to his legal representatives. That the heirs were intended by this designation is clear, and we think the payment which has been made to them under the act has been rightfully made, and that the fund cannot be considered as assets in their hands for the payment of debts."

Evidently this case is strong authority for the complainant below. In the body of the act the proceeds of the seizure and sale were to be paid over to the said Beverly Chew and the legal representatives of the said William Emerson and Edward Lorraine, respectively. The title of the act was, "An act for the relief of Beverly Chew, the heirs of William Emerson, deceased, and the heirs of Edward Lorraine, deceased." The statute then plainly shows that Congress used the word "heirs" and the words "legal representatives" as synonymous—exactly what we contend was meant by the use of those words in the act in question.

Price's claim was put on a business footing, and so regarded by Congress. The act of 1891 recognizes an advance by Price for the benefit of the Government, and used by it, to be a debt. The Secretary of the Treasury is directed to adjust, upon principles of equity and justice, the accounts of Price, as purser, to credit him with the sum paid over to and received by his successor in office, and to pay to Price or his heirs, out of the money in the treasury not otherwise appropriated, any sum that may be found due him upon such adjustment. Nothing could be clearer than the language of the act.

The reason for the action of Congress is concisely stated in a report from Senator Cameron from the Committee on Naval Affairs to the Senate, being Report 1339, Senate, 51 Congress, first session. It concludes thus: "In view of the loss of vouchers, through no fault of the claimant, your committee are of the opinion that the technical rulings of the department ought not to be enforced, but that the accounts ought to be adjusted upon fair and equitable principles, and that Purser Price ought to be credited for all the funds that he turned over to his successor, with which Van Nostrand charged himself and accounted for with the United States. We therefore report back the bill, and recommend its passage." Note that the title of the act is "An act for the relief of Rodman M. Price." The mention of "his *heirs*" occurs later, in that part of the act which directs the payment. These words, "or his heirs," do not in the least change the nature and true character

of the act. It is an ordinary act for the payment of an indebtedness of the United States. The transaction bearing date forty-one years previous to its passage, the act on its face advises the reader that Rodman M. Price was an old man. The not improbable contingency of his death happening before the accounts could be adjusted and any sum found due, led undoubtedly to the insertion of these words. Congress has no uniform method of wording private appropriation acts. In the fiftieth Congress there is an act "for the relief of the legal heirs" of one Livermore, and the secretary is directed to pay to his widow and administratrix money due him for services in commanding a camp in Michigan during the war, 25 U. S. Stat. 1034. On page 1071 will be found an act for the relief of the heirs of the late Solomon Spitzer, and many other instances might readily be cited. It is clear that the meaning of Congress was, that in case Rodman M. Price should die before the account had been adjusted and the sum due ready for payment, the secretary could pay it to the legal representatives of the said Price. The words "or his heirs" were unnecessary, and made no difference in the intent of Congress.

The accounts were adjusted and the sum found due in the lifetime of Price. Price, by will, could have devised this money, and the same, upon collection by the executor, if there were no debts, would have been payable to the devisee. The heirs of Price have no title founded upon the word "heirs" in the act. Their title, if any, is derived under the statute of distribution, as next of kin. And they say themselves in their answer (Record 43), that Price left no estate, real or personal, and that there is no property of his estate to come to them—that is, that they are not in fact his heirs. The decision of this Court in *Briggs* vs. *Walker* at its present term, sanctions the contention of the defendant in error.

But, again; Price, in law, received all this money, for he got part into his own hands, and part, according to law, he assigned. It passed to the Receiver. This part he left in the treasury, but nevertheless the assignment of it was legal and complete. Now, his legal representative, Mr. Borcherling, appointed receiver by the Court of Chancery comes and asks for it, and asks further, an injunction so that the heirs shall let it alone. Stress has been laid upon the use of the word "or." It is apparent that the heirs are mentioned only because of their connection with Price. Congress owed Price the money. So, whether the word "or" is used or the word "and," it really makes no sort of difference. Either expression would simply indicate the will of Congress that this debt should be paid, notwithstanding the previous debt of Price, and be paid as a debt to him. There was no reason supposable why his heirs should be preferred to any personal representatives. But "or" is often construed to mean "and," in order to effectuate the intent of parties.

Emerson *vs.* Taylor, 3 Halsted, 43.
Holcomb *vs.* Lake, 1 Dutch, 605.
Same case, 4 Zab., 688.
Den *vs.* English, 3 Harr., 280.
Den *vs.* Allaire, 20 N. J. Law (Spencer), 19.

The word "or" was construed "and" in an act of Parliament as old as 1 Vent., 62; *Engelfried* vs. *Woelpart*, 1 Yeates, p. 41-56. "Or" means "and" in the clause, "unlawful or forceable entry" in the statues of Wisconsin, *Witerfield* vs. *Stauss*, 24 Wis., 394, and in the American and English Encyclopœdia of law, volume 17, title "or," pages 218 to 222, many cases are quoted.

It has been already suggested that Rodman M. Price, deceased, in law, received and assigned this money, and, therefore, additionally, the claim of the defendants to it is invalid. A few words further on this topic may be useful.

As soon as the Secretary of the Treasury accounted with Price and passed to his credit a certain sum of money, that amount became an acknowledged debt of the United States to him, upon which he had a right to draw. He did draw some $45,000, out of about $75,000, and notwithstanding that by the injunction of the Court of Chancery issued in the original cause of which this is a revivor, he was forbidden from making use of that money, or from transferring the treasury orders by which it was paid, and was expressly directed to hand over these orders to the clerk of the court, and so engaged to do, through his counsel, in the presence of the Court, he nevertheless made use of this money, and thus was guilty of a contempt of Court, for which, had he lived, he would have been incarcerated. His conduct in that matter produced the Receivership. Mr. Borcherling was appointed Receiver in that cause, gave his bonds, was sworn in, and thus, in law, Price was deprived of all his property, and it was held, without authority on his part to deny it, that he had assigned all this debt to the Receiver. It is insisted here that neither Price nor any other party can deny that in law he came into possession of the particular money which is now the subject of adjudication. If the money was in private hands and could be sued for instead of being in the hands of the Government, the Receiver could bring suit for it, and in that suit no one would be allowed to deny that Price had received the money and legally assigned it to the Receiver.

Note in relation to this matter the following cases:

Harrison *vs.* Maxwell, 15 Vr., 319.
Wilkinson *vs.* Rutherfurd, 20 Vr., 245.
Williams *vs.* Herd, 140 U. S., 529.

The language of these cases is very sweeping as to the completeness with which legal assignments vest the estate of the assignor, even though his own hand is not placed to the instrument.

Stress was laid by the defendants below upon the proposition that this $23,000, still in the United States Treasury, held for its owner, belongs to them not only because of the language of the act of Congress, the force of which we have discussed, but because, as they say, the Court is without jurisdiction to order them to execute an assignment; because such an assignment will be void as against Section

3,477, Revised Statutes of the United States. Further, they claim that it is the administrator of Price and not his heirs who is liable, if any one, to the order of the Court.

These plaintiffs in error applied to the officials of the Treasury to have this money paid over to them as the heirs of Price. After full argument, the late Second Comptroller refused their application. But the Chancery Court of New Jersey having taken jurisdiction of the case as between Price and his judgment creditors, the department awaits the final action of the New Jersey Courts and of this tribunal.

This attitude of the department makes it unnecessary to follow in detail the cases cited by the defendants in the construction of Section 3,477, Revised Statutes.

It is needful only to ascertain the true meaning and purpose of Congress in passing that act originally entitled. "An act to prevent frauds upon the Treasury of the United States," 10th Stat., 170. It was passed, says the Court, through Mr. Justice Woods, in *Hebbs* vs. *McLean*, 117 U. S., 576, "in order that the Government might not be harrassed by multiplying the number of persons with whom it has to deal and might always know with whom it was dealing until the contract was completed and settlement made."

In 1877 the Supreme Court of the United States carefully considered the meaning of this prohibition against assignments. It was contended that the act of 1855 establishing the Court of Claims had repealed the act of 1853 because it spoke of claims assignable that might be sued in the Court of Claims. The Court, in denying this effect to the act of 1855, say: "At most it suggests that claims which are assignable may be sued in the Court of Claims in the name of the assignee, without undertaking to declare what claims may be assigned. That there may be such claims is clearly stated in the act of 1853, and there are devolutions of title by force of law, without any act of parties, or involuntary assignments, compelled by law, which may have been in view." *U. S.* vs. *Gillis*, 95 U. S., 416.

A little later the Court was called upon to pass upon the question whether the transfer of a claim to an assigneee in bankruptcy fell within the prohibition of the act. Erwin's case, 97 U. S., 392. The Court said:

The act of Congress of February 26, 1853, to prevent frauds upon the Treasury of the United States, which was the subject of consideration in the Gillis case, applies only to cases of voluntary assignments of demands against the Government. It does not embrace cases where there has been a transfer of title by operation of law. The passing of claims to heirs, devisees, or assignees in bankruptcy are not within the evil at which the statute aimed; nor does the construction given by this Court deny to such parties a standing in the Court of Claims."

In MacKnight against the U. S. (98 U. S., 179) the Court sustained a partial payment made at the treasury to an assignee.

The subject came up for further consideration before the Supreme Court in 1880 in *Goodman* vs. *Niblack*, 102 U. S., 556. Here it was

held that a general assignment made for the benefit of creditors, including all rights, credits, effects and property of every description, covered what might be due the assignor under a contract with the Government for carrying the mail. The opinion by Mr. Justice Miller indicates that the language of the opinion in *Spofford* vs. *Kirk* (97 U. S., 484) might well be modified. (See last paragraph on page 559.)

The language of Mr. Justice Miller in explaining the purpose of the act is so clear and has such an important bearing on the present case that we quote it as follows:

"We held it did not include a transfer by operation of law, or in bankruptcy, and we said it did not include one by will. The obvious reason of this is that there can be no purpose in such cases to harass the Government by multiplying the number of persons with whom it has to deal, nor any danger of enlisting improper influences in advocacy of the claim, and that the exigencies of the party who held it justified and required the transfer that was made. In what respect does the voluntary assignment for the benefit of his creditors, which is made by an insolvent debtor *of all his effects*, which must, if it be honest, include a claim against the Government, differ from the assignment which is made in bankruptcy? There can here be no intent to bring improper means to bear in establishing the claim, and it is not perceived how the Government can be embarrassed by such an assignment. The claim is not specifically mentioned, and is obviously included only for the just and proper purpose of appropriating the whole of his effects to the payment of all his debts.. We cannot believe that such a meritorious act as this comes within the evil which Congress sought to suppress by the act of 1853." Page 560–61.

From these decisions it is apparent that the object of the statute is, as expressed in the title, to prevent fraud upon the Treasury Department. It is not intended to protect a creditor of the Government against his creditors. The mischief to be remedied is the annoyance and danger to the officials of the Government while investigating a claim, which annoyance and danger may result from having to deal with other parties than the original creditor. This mischief disappears when by operation of law, in a court having personal jurisdiction of the parties, the rights and property of the defendant are transferred to his representative in law.

No mischief whatever is to be met and counteracted in the present case. On the contrary, the heirs of Price are claiming this money as against the estate of Price; and the subject matter is in controversy before a court having plenary jurisdiction of the parties. The officers of the Treasury have awaited the decision of the Court of Chancery of New Jersey.

No better safeguard could be asked than the decree of that Court. But from that decree the plaintiff in error appealed, only to be defeated in the New Jersey Court of Appeals, and after that to this Honorable Court, and for its decision the Treasury now waits.

In the process of announcing from time to time the construction of

this act the Court of Claims has uniformly been sustained by the Supreme Court of the United States.

The Court of Claims has an intimate knowledge of the theory and practice of the Treasury Department.

As might be expected, the question has arisen in the Court of Claims, and been passed upon as to the effect of the appointment by a State court of a receiver in proceedings supplementary to execution. The contractor was insolvent. His situation was like that of the defendant Price at the time of his death. The latter acceding to the plea had no property whatever, except, as we say, this balance on the books of the Treasury.

The case to which we refer is that of Redfield, receiver, against the U. S., decided 27th June, 1892, and reported 27 Court of Claims, 393. The facts are briefly as follows: William Mitchell, contractor for building life-saving station-houses, was entitled to receive in payment of his contract price, the sum of $12,536. On another contract of a similar character, there was due him a little over $2,000. A draft was made out to the order of Mitchell and sent to the Superintendent of Construction at New York to be delivered to Mitchell. But that delivery was to be upon a condition that Mitchell should come to the Superintendent's office and adjust a claim of certain persons for material furnished and labor performed in his said contract. Mitchell denied the right of the department to impose these conditions. He did not take the draft.

A judgment having been obtained against Mitchell in New York, execution issued and supplementary proceedings were had. The Court appointed Redfield receiver of all the property, rights, things in action, etc., of the judgment debtor. It seems also that Mitchell complied with the order of the Court in not transferring his property away. He executed an assignment to Redfield, the receiver, as the Court says, although the report of the case does not mention it. The receiver brought an action in the Court of Claims upon the contract. The United States denied the power of the claimant to maintain the suit. It is clear that the counsel for the Government made this objection with little hope of sustaining it, for the Court says that this power in the claimant "Although not seriously questioned by the defendant, is denied, and we are called upon to pass upon his legal capacity to recover what may be due Mitchell." Page 399.

The Court were unanimously of the opinion that the receiver could maintain the action.

Weldon, *J.*, * * * * The plaintiff is not only a receiver, appointed by the Supreme Court, State of New York, sitting in the city and county of New York, but he has the additional claim of being the assignee of all demands against the United States on the part of Mitchell, the assignment being executed for the purpose of enabling the claimant to more effectually perform the duties of receiver under his appointment by the Supreme Court of the State of New York. It may be that the personal assignment by Mitchell to claimant, it being for the indebtedness of the United States only, would not have the

effect to transfer the claim to him, but his appointment as receiver under the order of the Court has, in our opinion, that effect. It was held in the case of *Erwin* vs. *The United States*, (97 U. S. R., 392), "The act of Congress of February 26, 1853, to prevent frauds upon the Treasury of the United States, which was the subject of consideration in the Gillis case, applies only to the voluntary assignment of demands against the Government. It does not embrace cases where there has been a transfer of title by operation of law. The passing of claims to heirs and devisees, or assignees in bankruptcy, are not within the evils at which the statute aimed; nor does the construction given by this Court deny to such parties a standing in the Court of Claims."

In the case of *Goodman* vs *Niblack* (102 U. S. R., 556), it was held that section 3477, Revised Statutes, did not prevent a claim from passing to an assignee under a general assignment for the benefit of creditors. The Court said: "In what respect does the voluntary assignment for the benefit of creditors which is made by an insolvent debtor of all his effects, which must, if he be honest, include a claim against the Government, differ from an assignment which is made in bankruptcy?"

In this case, it is true no assigament in bankruptcy could be made, and no assignment of all the debtor's effects is shown; but the appointment of the claimant as receiver in the proceeding in the State of New York has the effect of transferring to him the title of all the choses in action of Mitchell, and if the voluntary assignment to claimant by Mitchell (it being for the claims against the United States and not all his property) did not have that effect, it has the effect of curing any and all defects as to the legality of the appointment of claimant so far as the judgment debtor is concerned. The reasoning of the Supreme Court in the case of *Goodman* vs. *Niblack*, in favor of assignees in bankruptcy and voluntary assignees of "all effects" by the debtor, properly applied, will sustain a receiver appointed by a court of competent jurisdiction in asserting the same title to choses in action which might as against the Government be asserted by assignees in bankruptcy and under deeds of general assignment."

The fact that the United States did not seriously question the power of the receiver, and the further fact that no appeal was taken, although the sum for which judgment was given was $15,046, show conclusively that the position of the Court is accepted at Washington as judicially sound.

There could be no doubt that the order of the Chancery Court, requiring Price to assign to Borcherling, receiver, all his property and things in action invested the receiver with full power. (See Record, pp. 4-16.) Price did not comply with the order. The same order can now be made upon an administrator. Had Price lived, and contemptuously refused to obey the order of the Court, a certified copy of the record stating the fact would have been sufficient for the purposes of the Treasury Department.

The defendant's brief argues: "The very thing that the act seems to be aimed at is to prevent a man from being compelled in any way

to make such an assignment, or to carry it into effect by pressure outside, either that of a court or otherwise."

In reply we say, first, in the present case there is no such "Claim" pending as is the subject of the case cited by the defendants. Here there is nothing pending except the question to whom shall we pay over an ascertained balance due upon the accounts of an ex-navy officer. There is no question of fact to be gone into as to the establishment of an indebtedness on the part of the United States. The sole question is, to whom can the United States with safety and convenience pay the money. Second, counsel misconceives entirely the decision in *St. Paul and Duluth R. R. Co.* vs. *U. S.*, 112 U. S., 733. All that that case decided is that the voluntary transfer of a claim against the United States for compensation to a railroad company for carrying the mail, made to another company, by way of mortgage, does not fall within the principles of exception to the statute such as an assignment by operation of law, and voluntary assignment for the benefit of creditors generally. The Court says also in effect that the fact that the mortgage is foreclosed by judicial action does not make it an assignment by operation of law.

This was not, as the counsel seem to think, the working of a forfeiture of a voluntary assignment by the interference of a court. It is simply an assignment by the party himself outside of the court, intended to convey his rights in a claim against the United States to another party. It does not appear that the assignor sought in any way to be relieved from the effects of its attempted assignment. Certainly the decision is of no authority to sustain the point that the receiver of all a man's property does not take, by virtue of the assignment, a claim against the United States.

Williams vs. *Heard*, 140 U. S. 529, holds that an assignee in bankruptcy does take such a claim by virtue of the assignment created by law. See also *Comegys* vs. *Vape*, 1 Pet. 193; *Milnor* vs. *Metz*, 16 Pet. 227; *Phelps* vs. *McDonald*, 99 U. S. 298; *Erwin* vs. *U. S.*, 97 U. S. 392; *Bachman* vs. *Lawson*, 109 U. S. 659.

Counsel for defendants are obliged to take the position that the claim of Rodman M. Price was not legal or valid either in law or at equity. They argue that in the St. Paul case the transfer of the claim was made by a judicial sale, and hence would have it understood that the order of the Court making Borcherling Receiver is void as against the statute.

The objection to the right of the St. Paul & Duluth R. R. Co. to recover in the Court of Claims was not based upon the fact that it took by foreclosure under the mortgage, but that the attempt of its predecessor to make a transfer by mortgage was itself contrary to the statute. The proceeding in court was that of an ordinary foreclosure of a mortgage, professing to convey lands, tracts, bridges, station houses, rolling stock, franchises, etc., etc. A claim against the United States did not pass under such a mortgage. The Court in its proceedings was carrying into effect the voluntary action of the mortgagor so far as could be legally done. This St. Paul case will be found in 18 Court of Claims,

405. If it had any relevancy to the question pending in Redfield against U. S. we may be sure it would not have escaped the attention of counsel and Court in that suit.

Counsel for plaintiff in error seeks earnestly to induce the Court to adjudge that the New Jersey Court had no jurisdiction, because the money in this case lies in the hands of the Government.

But nothing in the bill or the decision below makes or seeks to enforce any claim against the Government, or asks for a decree that the Government pay the Receiver the money, or even seeks to require the plaintiffs in error to make assignment of any right they may have to the money.

The bill alleges that the plaintiffs in error are without right, and of course makes no prayer for their assignment of the right they set up.

But the bill and the decision below deal with the plaintiffs in error, defendants below, as citizens of New Jersey, and the bill prays and the decrees order an injunction against their seeking to obtain this remnant of the originally sought fund from the Treasury, which, it says, holds it as voluntary stakeholder, ready to pay to whomsoever the courts say it should be paid. No further prayer is made, except that the court would decree the defendants below, if they received any of the money, to pay it over. And the bill thus prays, and the courts decide in favor of the prayer, asserting that the right to the money belongs to the Receiver, one of the complainants, because the court, having jurisdiction of the parties has thus decided in the original suit, and because intermeddling with it, without property in it, is contempt of the court that so decided, which directs its Receiver to get it.

And it declares that the money does not belong to the defendants' children though they are of Rodman M. Price, because first, it had passed to the Receiver by Jersey law, with all the assets of Mr. Price, and if not, by title made by the order of the chancery court in the cause to which he was a party, and because it was money in the hands of the Treasury, which, if not already assigned to Borcherling, the Receiver by force of law, did not belong to Price's children but to his administrator *pendente lite*, who was made party to the suit.

The jurisdiction is personal over the children, who claimed right as heirs, citizens of New Jersey, parties in the suit, to prevent their doing wrong to the complainant and depriving the court of property that through the receivership was, in the eye of the law, in the hands of the court itself as trustee for those entitled to it.

To this bill the defendants below, by pleas and subsequent answer set up two replies in defence, saying first, that the Receiver had no right to the money because there was no such assignment as required by the Revised Statutes, Section 3477, and because the act of 1891 for the relief of Rodman M. Price, made them, his children, the owners.

The argument already delivered on the side of the Receiver and Mrs.

Forrest answers all that has been urged by counsel on these, the only two matters over which this Court has jurisdiction. Further reply shall be brief. It must be to a great extent repetition.

1. Section 3477 refers to voluntary assignments only, not those which occur by operation of law.

In *St. Paul & Duluth R. R.* vs. *United States*, the mortgage foreclosed was a voluntary, though conditional assignment, void *ab initio*, because disobedient to the statute, and was not made lawful, because freed from the conditions, and completed in form by the decree of foreclosure.

In *Spofford* vs. *Kirk*, a contract was sought to be created out of voluntary action by Kirk, who gave orders in favor of third parties, for payment out of funds due him from the Government. The Court refused to imply a lawful contract of assignment of these funds from this voluntary action which did not pursue the statute.

United States vs. *Gillis* was, again, a simply voluntary assignment of a claim against the Government, declared to be inoperative on general principles, to entitle the assignee to bring suit in his own name, and further declared, though the suit below was in the Court of Claims, to be a void assignment because of the statute, and because voluntary.

The reasons given with such pungent force by Mr. Justice Miller, based on the mischiefs intended to be remedied by Section 3477 of the Revised Statutes, give the criterion as to the validity of any assignments.

Then only the question remains, did the appointment of the Receiver operate in law to create an assignment?

That question is answered by the courts below. It is the law of New Jersey which settles that; a law which the courts of New Jersey expound and which this Court will not.

The brief of plaintiff in error however vindicates the courts of New Jersey by copying the statute of New Jersey of 1875, (see brief, p. 37.) Counsel says the receivership in this case is solely for the benefit of one creditor. Not so; it is for his benefit in the first instance, but after paying him other creditors may also be paid, just as in bankruptcy or insolvency, and there may be preference, if the statute so directs, and payment of any creditors, whether or not mentioned by the debtor, after these preferences given.

This act, as stated in the brief for plaintiffs in error, authorizes the appointment of a Receiver of "the property and things in action belonging to, *or due to*, or *held in trust for*, said debtor as aforesaid, who *thereby* shall receive authority to possess, receive, and in his own name as such receiver sue for all such property and things in action, and the evidence thereof, and the said Chancellor may order said judgment debtor to convey and deliver to said Receiver all such property and rights in action and the evidence thereof, and said Receiver shall in

all respects be subject to the authority of the Chancellor in accordance with the practice of said Court, and shall and may dispose of the said property and things in action in conformity with the final decree in said cause."

The character and rights of a like Receiver appointed in proceedings supplementary to executions at law by judges of law courts, are reviewed in the case of *Miller* vs. *McKenzie*, 2 Stewart, 292, by the late Chief Justice Beasley. The language of the act in such cases as to the rights of receivers is identical with that in the act quoted in the adversary's brief, and the distinction between receivers of two classes, one, using the words of the Chief Justice, "who are appointed the custodians of property, *pendente lite*, by a court of equity, and the other appointed under the statute," does not refer to such receivers as Mr. Borcherling. So the language of the Chief Justice is descriptive of the Receivership of Mr. Borcherling, and he says: "With regard to the personal property of the debtor, and it alone is here in question, it seems plain to me that one of these Receivers by the act *appointing him becomes vested with the title*. Defining the effect of his appointment the act says, "that he thereby shall receive authority to possess, receive, and if need be, in his own name as such Receiver, sue for, such property or things in action." These terms are quite comprehensive, and the statute being a remedial one, it would have been illegitimate to limit their effect unless compelled to such course by very cogent considerations."

The other act (Rev. N. J., 1876, p. 394), regulating supplementary proceedings at law, has this language not in the Chancery act, viz.: "And it shall be the duty of such Receiver to apply the same (the property) in payment of the said judgment, and the acts of the proceedings thereon and the reasonable compensation of the Receiver to be taxed by the judges, and to pay the rest into said court wherein said judgment was recovered and docketed, to be there disposed of according to law."

This clause maps out the duty of the Receiver appointed in equity proceedings either to pay any surplus into the Court where the judgment was recorded, or more likely, by virtue of its inherent powers, to call other creditors and defendant into Court, and according to rights in each case distribute the money.

In other words, this act makes the Receiver trustee, first for the creditor, who sues, then for the other creditors—just as in bankruptcy and insolvency, judgment creditors have preference in distribution—and several judgment creditors according to priority of liens.

It is urged that the cases settling that assignments by operation of law are not affected by the statute 3477 do not apply to this case, but only to cases of bankruptcy, insolvency and the like. The answer is that every reason given by the Court in the adjudicated cases for

making such assignments valid, and holding them not within the statute, applies to the case of a receiver, when the man does not in fact assign but the law does for him, nay, may compel him to do so. And in accordance with this is *Redfield* vs. *The U. States*, already cited.

Receivers, vested with statutory power to collect the property of a litigant whenever found, are held in New Jersey to be authorized to sue for it there, although the Receiver was the officer of a court in another State.

Hurd *vs.* Elizabeth, 41 N. J., (L.) p. 1.

The ruling of Chief Justice Beasley, in *Miller* vs. *MacKenzie* has been followed ever since in New Jersey and elsewhere, and is familiar law in text books. See *Harrison* vs. *Maxwell*, 44 N. J. (L.), p. 348; 15 Vr., 348; *Wilkinson* vs. *Rutherford*, 20 Vr., 245; *Williams* vs. *Heard*, 144 U. S., 529; High on Receivers, § 442; Freem. on Executions, § 420.

Argument, however, on this point is superrogatory. The courts of New Jersey have so held in this case and it is not a Federal question whether they were or were not right in expounding their own laws.

If the Court is with us here, there is an end of the matter. The money claimed by the children of Mr. Price was admittedly in the U. S. Treasury, held for him on the 10th of October, 1892. See Plaintiff's Brief, p. 5. That was the date when the Receiver was appointed. It then became the Receiver's property.

Nobody except the plaintiffs in error claim it. They reside in New Jersey. They can set up no claim because it is in the District. Nor are they creditors of their father.

The case then does not necessarily call for a construction of the act of 1891—the act whose title is "An act for the relief of Rodman M. Price"—not of his children. It will not be disputed that Price had the legal right had there been no receiver or injunction to take the whole money. Nor did the children make claim till the day after his death.

Yet it is proper to discuss this part of the case; the part to which most attention was paid in argument below.

Counsel for the plaintiffs in error contend that the plaintiffs in error are original takers under the act.

Original takers when? Not when the act was passed, for it was "An act for the relief of Rodman M. Price," by its title, and the body of the act makes the money payable to Rodman M. Price *or* his heirs.

He had no heirs then—nor could he have. He had children—but

not heirs. His death must occur before he could have any heirs, whether of his body or collateral.

Call "or" "and," if you like, the case is the same. "*Heirs*" necessarily contemplates succession. Yet, a gift to a man *and* his heirs is the strict technical method of describing an estate in fee—an estate in lands—nothing else. And, then, if the man conveys, his heirs when he dies, have nothing. The estate is gone.

When the language is, to R. M. Price *or* his heirs, there can be but one meaning. The money is to go to Rodman M. Price if he is alive when it becomes an acknowledged debt, and asks for it—if not then alive, then to those who will, in common parlance, be heirs of personalty, that is to say, his personal representatives, his executors or administrators.

The whole view of the other side is based on one sentence contained in the brief, page 41, near the bottom. Speaking of the act, counsel says, "It confers a gratuity; it does not pay a debt." And he adds, "It will not admit of any other construction." Yet all the judges before whom the question up to this time has come, adopt a different construction, and just because it is so plain that the act admits a debt, and seeks to pay it.

Rodman M. Price was a Purser in the United States Navy and Acting Navy Agent; he had *accounts* with the United States; they had not been *adjusted;* he had made claim to Congress that he had *paid* over moneys to his *successor* in office, which was receipted for by him January 14, 1850, wherefore the Secretary of the Treasury is directed to *adjust* these accounts upon principles of equity and justice—the two words are synonymous—to *credit* him in this adjustment with the sum he had a receipt for, and to pay over to him any sum that might be found *due* to him upon such adjustment.

Is it not idle to talk of this as conferring a gratuity? And again, the title of the act accords. A creditor is relieved who gets his debt.

Every presumption is against gratuity. Counsel say Mr. Price was poor. Did Congress know that? And is that a reason generally actuating acts for relief like this? And if it was simply charity, why leave it to the Treasury to examine and settle accounts to fix the sum that was to go to him?

And why, especially, should Congress make a gift to "his heirs?" Did it know that he had children? Did it mean to give the money of the country, in what amount they would not themselves even decide, to any heirs Mr. Price might have, however far removed from him collaterally?

Bills of relief in Congress are not models of exactness in the use of legal words. Succession is indicated as their intention sometimes by the word "heirs;" sometimes by "legal representatives;" sometimes

by "representatives and heirs;" sometimes by "legal representatives or heirs," and the courts are left to determine the intention from the nature of the payment and all apparent circumstances leading to the legislation.

The brief opinion of Chancellor McGill in the original case, given before Governor Price's death, printed as an appendix to this brief, and the exhaustive discussion of the case by Mr. Justice Lippincott, of the New Jersey Court of Errors and Appeals, which is to be found in the Record, make the argument on the part of defendants in error unnecessary.

It may be well shortly to notice certain views and statements made in the argument of the learned counsel for plaintiffs in error.

On page 24 notice is taken of the fact that no final decree was made in the original cause which the bill in this case revived. How could there be, when Mr. Price died intestate, and no administration was ever taken out, except that *pendente lite* found in this case, and confined to it?

On page 25, counsel states two questions as arising—first, as to the power of the Court of Chancery to make a decree enjoining the defendants, the plaintiffs in error, from applying for or receiving the moneys in question in the absence of an adjudication as to the rights of the matter. But the overruling the pleas, and the decree following the answer, do adjudicate as to the right of the matter. And yet this is not a Federal question.

On page 25, it is argued that the order appointing the Receiver has no binding effect upon plaintiffs in error, not being parties to the suit, and by which it is said they are not bound as heirs because they have no assets. But any transfer of Price's property binds all the world. It is a fact, the validity and effect of which is like a deed.

As to there being no adjudication in this cause, which is also said on this page, how, then, are the plaintiffs in error here?

On the same page, 25, the effect of the order appointing the receiver is attacked, because of alleged want of proceedings to carry it into effect.

But the decision below is final as to this.

And it is founded on the statute quoted in plaintiff's brief, and heretofore reviewed in this.

On page 29, the power of the New Jersey Courts to compel plaintiffs in error to assign said claim, to collect the moneys and pay them over is assaulted because they have not the right to operate upon the chose in action itself, and that, therefore, they had no jurisdiction to enjoin defendants from proceeding to the collection themselves.

Again, whatever question is here raised is not a Federal question. It belongs to New Jersey Courts to settle their own practice.

The plaintiffs in error bring up two decrees—one, that of the Court of Errors and Appeals quoted on page 14 of their brief, denying the right of the plaintiffs to the money, and asserting that of Borcherling, the defendant in error to have it paid to them. The other decree—p. 19—simply decrees the injunction prayed for in the bill and costs.

"Assignees" in bankruptcy and insolvency are "Receivers" under another name. They have the same authority, title to property, and duty—are officers of courts—and in all respects have like character. At any rate. such is the case in New Jersey.

The word "Receivers" is generally used in regard to corporations. But in New Hampshire "Assignee" is the title of those who are what in New Jersey we call receiver. And this, it is believed, is true in other States.

In conclusion, reference is respectfully made to the opinion of the Court of Errors and Appeals contained in the Record, and to the head note thereof, drawn by the Justice who delivered it, in 9 Dick., Ch. 669, briefly embodying it. A unanimous Court, ten Judges sitting, seven of them Justices of the Supreme Court, affirmed the Chancellor, deciding that the act for the relief of Rodman M. Price gave his children no right to the money in the Treasury, and that *his* right therein lawfully passed to the Receiver appointed by the Chancellor in the suit against him by the administratrix of Samuel Forrest, a judgment creditor.

CORTLANDT PARKER.
RICHARD WAYNE PARKER.
FRANK W. HACKETT.
Counsel for Defendants in Error.

TREASURY DEPARTMENT,

SECOND COMPTROLLER'S OFFICE.

Washington, D. C., July 11th, 1894.

Claim of the heirs of Rodman M. Price for balance due and unpaid under the act of February 23, 1891, and protest of Frank W. Hackett.

The comptroller was a member of Congress and participated in the debate, and voted for the Price act of 1891. Since that time he has had to do with it in the treasury department, until he thinks he is familiar with the origin of this claim, and all the facts that led up to and secured the passage of that act by Congress.

I am very clear in my own mind that it was not intended as a bounty to Mr. Price, or to his children, nor could it be. Mr. Price thought in 1849, that he was acting within the meaning and construction of a certain law in regard to the appointment of acting pursers. As such, he turned over to the acting purser who succeeded him, a large amount of money, and took his receipt for it, believing that he would be indemnified at the proper time by the Federal government. I, therefore, think that the act of 1891 was based upon the idea that he held a fair, just, moral and equitable claim, if not technically legal, against the Government.

In my opinion, the case of *Emerson* v. *Hall* has no bearing whatever upon the case. In regard to the peculiar language of the act by the use of the words "or heirs," I find upon an examination of the law books that there have been a very large number of adjudications, probably a hundred, in the courts of final resorts of the different States of the Union, as to their meaning in statutes, as well as in various deeds and written obligations, and other papers—as to what "or" and "and" mean—and I find that in nearly all the cases where either of these words, the conjunctive or disjunctive words, "and" or "or" has been used, that it has almost universally, without exception, been held that "and" shall be construed "or," and that "or" shall be construed to mean "and" according to the fair meaning of the law-makers, to be gathered from a construction of the whole statute, and the circumstances that led up to the enactment of the statute.

I therefore attach no special importance to the word "or." I believe that, in fact, the preferable word under the circumstances, would have been the word "and," so as to conform to the old common law doctrine, that the payment was to be made to Price and his heirs; meaning thereby that Price in his lifetime, if he lived long enough to consummate a settlement with the Federal Goverement, should obtain and take the money; if not, his heirs according to the law of descent, to take it under the laws of the domicile where Price lived at the time, who would be entitled in the ordinary way of descent to the amount

I now come to the actual condition of affairs. First, the Comptroller is well persuaded, and that, too, by Federal authorities, and upon general principles, that no action can be done that in point of technical

authority would hinder or obstruct the Federal Government in the payment of this money, if the Government were fully determined to exercise that right. Public policy forbids that the Federal Government should be hampered in the payment of its debts, and so where process is directed against any of the officers of the Treasury Department to prohibit them from making a payment, according to the decisions of the Federal Courts, such process would be held null and void. But it seems that some of the courts are disposed to practically avoid such a condition of affairs by non-interference with the Federal Government, or its officers, but visit their penalty and punishment upon the payee, and undertake by injunction to prevent him from receiving the money that the Government would otherwise pay him, or that may justly be due him from the Government. That is this case. The Chancery Court of the State of New Jersey, by injunction, laid upon Governor Price in his lifetime, its plenary power to forbid him to receive the money under contempt and punishment.

If I understand the doctrines of equity correctly, they are when a court of equity once gets hold of a subject-matter, it will hold it to the end, and will, if necessary, bring in additional parties from time to time, and will undertake to do complete and exact justice among all the claimants in one adjudication over the matter in dispute or *res*. The Court did that so far as Mr. Price was concerned in his lifetime. So long as Mr. Price was alive, undoubtedly his heirs had no interest nor control over the money, nor could they in anywise interfere with his disposition or management of it, or his right to receive it.

I hold it, therefore, to be clear that after his death, if the word "or" is to be construed "and," and if the subject-matter of the act, the amount of money prescribed in the act, is property, as I think it is, then the court of equity having laid its power upon Mr. Price, and obtained jurisdiction over this claim in New Jersey, that being the place of Price's domicile, his estate, this money included, would have to be distributed or descend according to the laws of the State of his domicile. I do not doubt but that it is within the power of a Court of Chancery to bring in all the heirs, hold them in the case, and proceed to adjudicate it, and I apprehend, and I put it that way without asserting it as a fixed fact, that while the chancery court would have power to adjudge and decree as to the amount of money that might be due the plaintiff in the injunction in the pending case; yet after its determination of the amount and judgment rendered, I apprehend the amount would have to be certified by judgment transcript to the probate court and paid by the administrator or executor as a preferred claim in the probate court against the Price estate.

I do not presume for a moment that the chancery court of New Jersey could issue an execution and compel payment of this money, nor could any of its powers be brought to bear to compel, without at least additional legislation by Congress, the Comptroller to pay its judgment; but while that is true, yet on the other hand, the Comptroller so far having awaited the adjudication of that chancery court, ought to abide by the result of that litigation, and await a final adjudi-

cation and certification of the amount, as to who are entitled under the laws of that State.

This comes more from comity, and from a disposition on the part of the treasury officers to obey the laws of the land, and to help to enforce the decrees of the courts that have jurisdiction over matters in litigation of this kind, than from any actual authority that a court may have over the Comptroller to compel him to make payment.

In conclusion, then, the Comptroller will not at this time act in this matter, but will say to the gentlemen, that they must fight in out in the courts of New Jersey, and that this court will follow the final decision that may be rendered there. I have given this matter very considerable thought since Mr. Fay filed his claim, and since you, Mr. Hackett, filed your protest. Not only that, I have taken a number of the law books and looked them through upon such points as suggested themselves to me; and the Comptroller is pretty well satisfied that this is a just, honorable, and fair thing for him to do by all parties. Hence this matter will be suspended until such time as the Comptroller may be put into possession of the final decree, either of the New Jersey chancery court, or such court as may have appellate jurisdistion therefrom.

C. H. MANSER,
Second Comptroller.

IN CHANCERY OF NEW JERSEY.

FORREST,
vs.
PRICE.

[Extract from the opinion of Mr. Chancellor McGill, reported in 7 Dickinson (52 N. J. Equity) Reports, pages 23 to 30.

THE CHANCELLOR.

The proceeding in which the orders contemned were made is designed to quickly discover and secure assets of a judgment debtor which cannot be reached by execution, and among them moneys due to the judgment debtor from another or others. When it is made to appear that there are such moneys, the statute expressly authorizes the court of chancery to restrain the debtor from transferring them and to require him to assign and deliver them to a receiver. *Rev. p. 121.*

It is not controverted that when the court took action in the present matter, by the orders in question, the defendant Price had become entitled to moneys from the United States government. The act of congress had established his claim and the proper accounting officers had ascertained it. It remained only for the defendant to receipt for the moneys and obtain possession of them. They were in substance his property. *Goreley* v. *Butler, 147 Mass. 8, 10; affirmed by the United States Supreme Court, 146 U. S. 303.*

It was after the sum due to defendant was ascertained that the court, by its order, forbade the defendant to endorse or transfer any drafts that might be delivered to him in payment of his property, and to assign to its receiver all moneys that remained undrawn from the United States treasury.

It is no excuse in a proceeding for contempt that the orders contemned are erroneous in law. The method of correcting such error is by appeal, not by disobedience. When a person is proceeded against for disobedience to an order or judgment, he cannot allege in defence that the court erred in that order or judgment. To be successful he must go further and make out that there was, in legal effect, no order, by showing that the court had no right to judge between the parties upon the subject. *People* v. *Sturtevant, 9 N. Y. 263, 266; Una* v. *Dodd, 12 Stew. Eq. 173, 180; S. C. on appeal, 13 Stew. Eq. 672, 706.* Recognizing this well-established principle, the defendant denies the jurisdiction of the court to make the orders here in question, upon three grounds—*first*, because the fund is a governmental bounty to him, designed for his personal maintenance and comfort, and therefore is not liable to application to the satisfaction of the judgment of the complainant, however meritorious it may be; *second*, because the restraint of the endorsement of the governmental drafts tended to interfere with and delay the fiscal operations of the government; and, *third*, because

the assignment of the moneys to a receiver, as contemplated by the orders of October 10th, 1892, and December 21st, 1893, would contravene the letter and policy of the law enacted in the three thousand four hundred and seventy-seventh section of the Revised Statutes of the United States and be a nullity.

In *Munday* v. *Vail*, *5 Vr. 418*, *422*, Chief-Justice Beasley defined jurisdiction to be the right to adjudicate the subject-matter in a given case, to constitute which it is essential that the court must have cognizance of the class of cases to which the one adjudged belongs; that the proper parties shall be before the court, and that the point decided must, in substance and effect, be within the issue made by the pleadings. Testing the present case by the definition thus given, we first ascertain that its subject matter is the application of the defendant's established and ascertained property in possession of the United States to the satisfaction of the complainant's judgment. That this court has cognizance of this class of cases is not disputed. The defendant is regularly before the court, and the points to be decided are clearly within the issues presented by the pleadings. To urge that the particular money in question is exempt from the application desired, is to present a defence upon the merits of the case, and to object that the temporary restraint of the endorsement of drafts will hinder and delay the fiscal operations of the United States, is to offer a reason why the court should not continue its temporary restraint, and so the insistment that, under the section of the United States Revised Statutes which has been referred to, the assignment to a receiver would be a nullity, may be a reason why the court should not order it to be made. None of these matters, however, go to the court's jurisdiction—they are defences properly belonging in the cause which the court has power to adjudicate upon. If the court err in that adjudication, the remedy is by appeal.

Confusion is avoided by bearing in mind that this suit is not a proceeding against the United States nor directly against a fund in its possession, but a proceeding *in personam* against the defendant Price.

But, assuming that the contentions of the defendant properly question the court's jurisdiction, let us examine their merits.

No tenable ground upon which the first can be rested has been suggested in behalf of the defendant. His connection with the United States navy was severed some forty or more years ago. It does not appear that he now owes the government any duty, for which this fund is designed to maintain him. The case bears no resemblance to the unearned half pay of a retired officer, which is protected because of the service he may be called upon to render. *Schwenk* v. *Wyckoff*, *1 Dick. Ch. Rep. 560.* I apprehend that a claim actually established, so that it now is property of the claimant, even though it spring from pure bounty, is not, in absence of express legislative provision to the contrary, exempt from the claimant's debts. The act for the relief of the defendant does not intimate that the provision it makes is a sacred bounty.

But it affirmatively appears that the money, of which the statute

authorizes payment, though not a legal claim, is not pure governmental bounty.

The provision in the act for the relief of the defendant Price, that payment should be made to him "or his heirs," has been urged as indicative of the legislative intention that the payment was not intended to benefit creditors. I do not so understand the act. The expression "or his heirs" was undoubtedly a provision against his death before the day of payment, and there can be no substantial doubt that it is used in the sense of personal representatives, the thing dealt with being personalty, and appears in the act to secure the moneys to his estate in the event of his death before they are paid.

The direction of the statute is to credit the defendant with a sum of money which he, many years ago, loaned to an officer and agent of the government for the use of the United States, and which that officer received in his official capacity for the purposes of the government. That officer was the successor of the defendant in a mission in which the defendant had been specially charged with the duty of going into a new and unsettled country, at a time when the inhabitants, as history records, had become mad in speculations, to establish a credit for the government. The method of establishing that credit, it is true, was prescribed, but it was difficult to literally follow the requirements of the prescription. Exigencies demanded that moneys should be had. Of necessity, the government officials, five thousand miles, in course of usual travel, from home, were obliged to exercise some discretion. It was in this situation that the defendant Price advanced to his successor $75,000 of his private moneys for the use of the United States. The receipt of such a loan for the government was beyond the scope of that successor's authority, and the moneys never having, in fact, been applied to the use of the government, the receipt of them was not ratified or recognized, and hence the defendant was subjected to a loss.

After many years, congress reviewed the transaction, and, recognizing in it a moral obligation upon the United States, directed that credit be made to the defendant for the amount of his advance. The environments of the whole situation, when the loan to Van Nostrand was made, evinced to congress an appropriateness in the transaction and admitted of the advance being made in good faith, for the benefit and convenience of the United States. That it was made in good faith does not appear to have been doubted. The congressional proceedings show that it was upon consideration of these facts that the burden of the loss, without interest, was thrown by congress upon the public treasury. The statute was designed to restore to the defendant his property, which, in good faith, he had entrusted to an officer of the United States for the benefit of his principal.

I do not find in this situation even the bounty of a grateful government, partaking of the character of a pension or reward for a meritorious deed, but simply the restitution of property which had once belonged to the defendant, as assets for the liquidation of his pecuniary obligations; and I fail to understand how, upon its restoration to the defendant, it can be held to assume a new character.

Upon the second insistment, it is not perceived how the restraint of the endorsements of any drafts which should be delivered to the defendant pending the return day of the order to show cause, dated August 8th, 1892, would have materially interfered with the fiscal operations of the government. The restraint operated upon the defendant, not upon the government. It substantially forbade him to draw the money upon the drafts, leaving the government to pursue such course in the event of his failure to draw, that its regulations or practice permitted. Besides, the restraint was limited to a short day, when the defendant would be heard upon the question whether a receiver should be appointed. That delay, in point of fact, proved to be exactly one week from the delivery of the drafts. It has not been suggested how such a delay could operate prejudicially to the public service. I am not referred to any law, rules, regulations or policy of the governmental departments which show that such a delay, or kindred delays, can so operate. That it did not infringe governmental regulations amply appears by the fact that two of the four drafts were not endorsed and presented by the defendant for payment until the 3d of October, and were then paid, so far as appears, without objection.

It is unnecessary, under this state of facts, to discuss the question whether this court would have power to make an order which would directly or indirectly inconvenience and impede the fiscal operations of the United States. The order in question does not appear to have been of that character.

The third insistment of the defendant that an assignment of moneys in the United States treasury, as directed by the orders of October 10th, 1892, and December 21st, 1893, to the receiver, would contravene the policy of the law of the United States, and that, therefore, the orders were not within the jurisdiction of this court, remains to be considered. Upon this insistment the greatest stress had been laid. It is to be observed that the section of the Revised Statutes which is referred to declares that all assignments of claims upon the United States shall be absolutely null and void unless they are freely made after the allowance of the claim, the ascertainment of the amount due and the issuance of a warrant for its payment. This section was taken from a statute of 1853, which was entitled "An act to prevent frauds upon the treasury of the United States." The purpose of congress, in its enactment, inferentially was to protect the government from the necessity of dealing with those who were not directly and originally concerned in the claim—that is, with strangers to it whose numbers and possibly merely speculative interests in it might embarrass its speedy and just allowance or denial. *Spofford* v. *Kirk*, *97 U. S. 484*; *Goodman* v. *Niblack*, *102 U. S. 556*; *Bailey* v. *United States*, *109 U. S. 432*; *Freedman's Savings and Trust Co.* v. *Shepherd*, *127 U. S. 494*.

Viewed in the light of a protection to the government, it has been held that the statute is not to be interpreted according to the literal acceptation of the words it uses. In the case of *Erwin* v. *United States*, *97 U. S. 392*, it was ruled that the statute applied to cases of voluntary assignments of demands against the government and did not

embrace cases where the title was transferred by operation of law, such as the passing of claims to heirs, devisees or assignees in bankruptcy, and, upon the same reasoning, in *Goodman* v. *Niblack, supra*, it was adjudged that it did not extend to a voluntary assignment for the benefit of creditors, and in *Bailey* v. *United States, supra*, it was held that the officers of the government might safely pay according to an unrevoked power of attorney if they saw fit to do so. So a partnership agreement to carry out a governmental contract, held by one of the partners, which subjected the moneys earned from the government under the contract to the rights of other parties, was not regarded as within the policy of the act. *Hobbs* v. *McLean, 117 U. S. 567.*

It is not perceived that the assignment and consent to payment to the receiver in the present case differs in principle from an assignment to an assignee in bankruptcy, or to an assignee under a voluntary assignment for the benefit of creditors. The reason underlying the adjudications which exclude those cases from the operation of the statute is stated by Mr. Justice Miller, in *Goodman* v. *Niblack*, in this language, "that there can be no purpose in such cases to harass the government by multiplying the number of persons with whom it has to deal, nor any danger of enlisting improper influences in advocacy of the claim; that in such cases the exigencies of the party who held the claim justified and required the transfer that was made."

This reasoning is not a whit less pertinent in its application to the present receivership than in its application to either of the assignees adjudicated upon. The receiver here is actuated, in the performance of his trust, by the identical motives and desires which actuate assignees in bankruptcy and under voluntary assignments for creditors.

I am therefore of opinion that the assignment which was required from the defendant. Price, was not within the inhibition of the United States law.

In reviewing the disobedience of the defendant, I am strongly impressed that the objections now interposed are mere subterfuges urged to secure his escape from punishment for a deliberate defiance of the court's authority.

It is remembered that, when the order of August 8th, 1892, forbidding the endorsement of drafts, was first served upon the defendant, the drafts were not in his possession, and that, with the plain command of that order before him, he went to Washington and there obtained the drafts, and upon the same day, although it was only a week before the time fixed for hearing in this court, he deliberately endorsed two of the drafts. Then holding the two remaining drafts until after he had procured an adjournment of the hearing upon the order to show cause, upon terms which continued the restraint upon him, he endorsed those two remaining drafts, obtained the money upon them and departed from the state so that the court's process could not be served upon him, and practically remained without the reach of that process for fully nine months. Furthermore, after he was served with the writ of attachment and examined upon interrogatories, he refused to assign to the receiver or to consent to the receiver's having the moneys

remaining in the United States treasury. These circumstances, with other surroundings of his disobedience, convince me that his intention was not to surrender his moneys to the court's receiver, and if, in carrying out that intention, it was necessary to disobey the court's order, he would do so. Such intention carried into effect is, without question, a punishable contempt. *State* v. *Trumbull, 1 South, 157; Fraas* v. *Barlement, 10 C. E. Gr. 84: Una* v. *Dodd, 13 Stew. Eq. 672, 719.*

Filed Jan. 8, 1894

Supreme Court of the United States.

Thomas H. Tuttle et al., Plaintiffs in Error,
Alice M. Forsyth et al., Defendants in Error. } No. 164.

In Error to the Court of Errors and Appeals of the State of New Jersey.

SUPPLEMENTAL BRIEF FOR DEFENDANTS IN ERROR.

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FRANK W. HACKETT,
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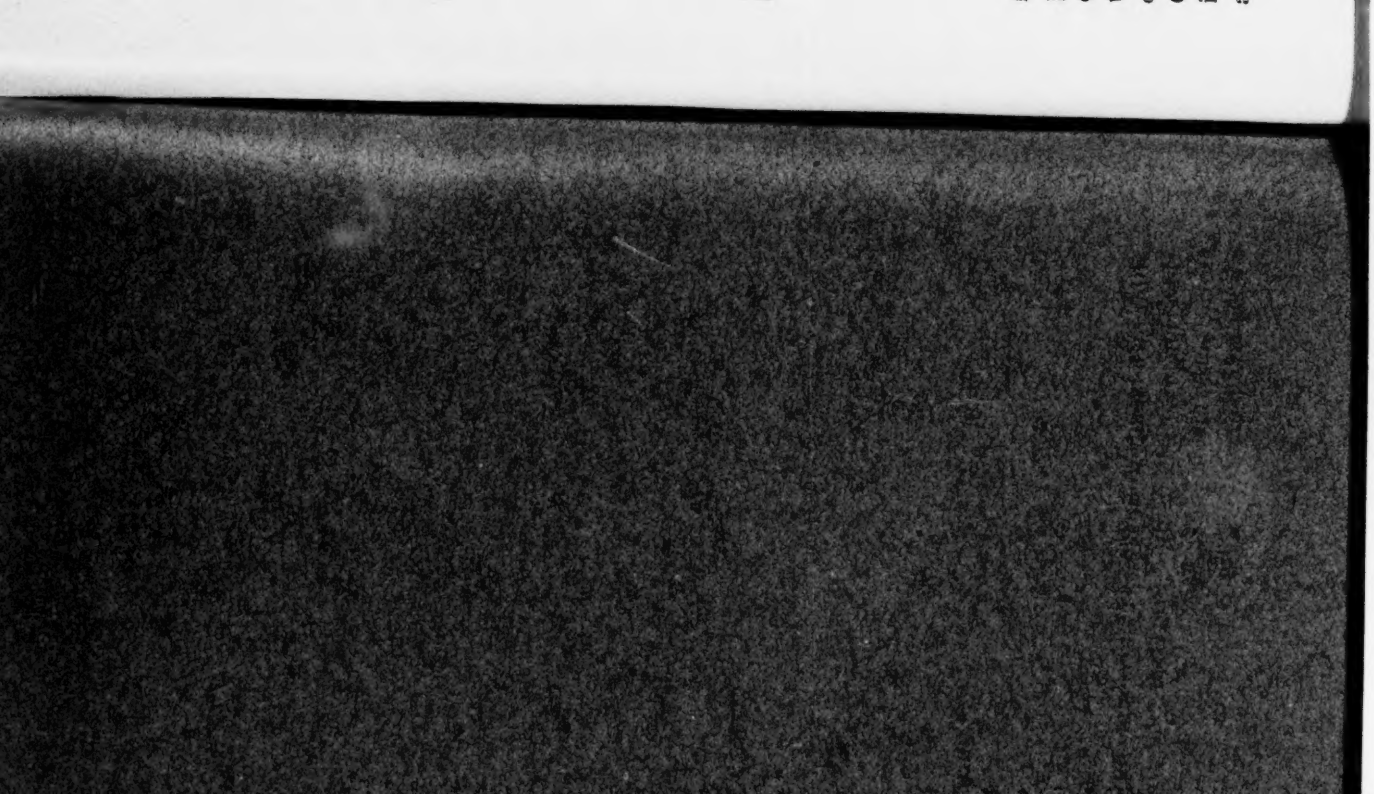
Thos. W. Dunlick, Printer.



Supreme Court of the United States.

RODMAN M. PRICE ET AL., Plaintiffs in Error,
v.
ANNA M. FORREST ET AL., Defendants in Error. } No. 105.

In Error to the Court of Errors and Appeals of the State of New Jersey.

SUPPLEMENTAL BRIEF FOR DEFENDANTS IN ERROR.

STATEMENT OF THE CASE.

The recent additional brief for the Plaintiffs in Error, filed by John C. Fay, renders necessary a short supplemental brief for the defendants. To restate the case, Rodman M. Price, now deceased, was purser in the Navy in 1859, and paid over to his successor $75,000 of his own money (folio 30) as an accommodation to the Government of the United States at that time, being in the early history of California (folio 31). In 1891 an act was passed (folio 38) as follows:

AN ACT FOR THE RELIEF OF RODMAN M. PRICE.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury of the United States be, and he is hereby, authorized and directed to adjust, upon principles of equity and justice, the accounts of Rodman M. Price, late purser in the United States Navy, and acting Navy agent at San Francisco, California, crediting him with the sum paid over to and receipted for by his successor, A. M. Van Nostrand, acting purser, January fourteenth, eighteen hundred and fifty, and pay to said Rodman M. Price, or his heirs, out of any money in the Treasury not otherwise appropriated, any sum that may be found due him upon such adjustment.

Approved February 23, 1891.

Under this act, in brief, in the lifetime of Price the accounts were adjusted, drafts drawn for them, and thereupon, on a creditor's bill, long before filed in chancery, he was enjoined from indorsing the drafts until further order.

He broke that injunction and drew certain drafts.

A receiver was appointed of all his property and things in action, and he was further ordered to convey all such assets to the receiver, and especially to indorse and deliver the remaining drafts to the receiver (folios 15 and 16).

On his failure to do so he was attached.

Thereupon, upon his death, his heirs and John C. Fay, his attorney and theirs, claim the right to draw this money free of his debts. The contrary has been decreed in the New Jersey courts, on revivor of the creditor's bill of the above-mentioned suit, and the heirs have been enjoined.

There is no error in this decree or in the injunction granted against his heirs.

ARGUMENT.

The ground is taken by Mr. Fay's brief that the act in question was by way of a bounty, because before that act R. M. Price could not have sued the United States.

That cannot possibly be true, because, if so, every special act would be by way of bounty. Of course, special acts are only passed where the person cannot sue. The distinction is not on such technical grounds, but real and essential, between acts by way of bounty, as, for instance, grants of pensions made as rewards for distinguished services, or for the support of old soldiers, and acts which are made as acts of justice, which recognize just and equitable claim, and remove some bar in its collection, as, for instance, the statute of limitations, and allowing what in equity and justice is due by the Government.

To determine this question, consider what is the consideration on which the act was passed. If that consideration be money or property, then *prima facie*, and in the absence of express provisions by the statute to the contrary, the claim is to be regarded as property and as taking the place of the original money or property for the benefit of the person or his estate, and therefore for the benefit of his creditors. This whole doctrine seems to be settled by the recent decision in Briggs v. Walker, decided October 17, 1898. (See Lawyers' Co-operative Reporter, Oct. Term, '98, No. 1, p. 55.) The court (p. 57) distinguished Emerson v. Hall, because it granted the money as a bounty for meritorious services, from the Briggs case, which was for the proceeds of cotton taken by the Government.

We take also the words of the statute. The Briggs case also distinguished the Emerson case, because the act there was "For the relief of the heirs of William

Emerson, deceased," while the act in question was entitled "For the relief of the estate of C. M. Briggs." In this case it is "For the relief of Rodman M. Price."

But the statute makes it perfectly plain that this act was not as a bounty, but as a matter of justice.

It directs—

> Adjustment by the Secretary of the Treasury upon principles of equity and justice, of the accounts of Price, as late purser and Navy agent, crediting the sum paid over and receipted for by his successor, and on such adjustment, payment of the sum found due.

This statute goes far beyond that in the English case of Stevens v. Bagwell, 15 Ves., Jr., 140, 152, in which case it was expressly decided that even a bounty is to be considered in augmentation of the estate, unless a contrary intention be shown—so held as to prize money awarded to an officer's representatives after his death.

II.

The claim that the heirs have greater rights than Price is without foundation. The United States have no reason to give them any bounty. If it was not a bounty to Price, it was not intended to be so to them. We must construe the act by its purpose. In the prize money case and in the Briggs case the word "representatives" was held to mean executors or administrators, in order to carry out the purpose of the act. This act is plainly in augmentation of the estate of Rodman M. Price, living or dead, and does not give his heirs a different right than he would have living. To hold otherwise is to frustrate that purpose, to deprive him of the power of making a last will and testament,

as well as of the power of paying his debts—debts which he owed when he originally advanced this money.

There is no difficulty in a proper construction agreeable to the rest of the act. In a bill of sale of chattels as well as in a deed, a gift to a man or his heirs will be construed as if "or" were "and," and as an absolute gift. So the Treasury Department held in this case.

Another equally sensible construction is that the word "heirs" is to be read to mean "representatives," as is constantly done in bequests, so that in case he died before the statute was passed, it should be good for the benefit of his estate.

The claim for this money so to be adjusted and paid actually *vested* when the statute was passed, although unliquidated. When the adjustment was made it was no longer unliquidated, but was for a fixed amount, on account stated.

When the drafts were drawn it was actually payable.

When a Court of Equity, acting on the conscience of Price, ordered the indorsement and delivery of the drafts, and the assignment of all his rights in action as well as the drafts to the receiver, full jurisdiction attached as to him and his successors in title, and cannot be defeated by his death.

III.

It is settled by this court that the prohibition against assignments of claims was not intended to effect general assignments of all property, whether by death, executorship, administration, bankruptcy or insolvency. It was intended to prevent special assignments, and especially what the law calls maintenance by attorneys or agents. The prohibition of the statute

might thus apply to the powers of attorney alleged in folio 15 of the record.

It is said that when the bill was originally introduced it read, "Rodman M. Price, his heirs or assigns," as set out in Fay's brief (p. 8), but without any warrant in the record. The words "or assigns" may be assumed to have been struck out to prevent the defeating of creditors by such assignment, or, at any rate, in pursuance of this general policy.

The claim vested in Rodman M. Price and became an adjusted and liquidated debt, payable to him before his death, and the Treasurer of the United States only waits by courtesy to see whom the courts of the State of New Jersey recognize as the proper representatives of Rodman M. Price for the reception of this money.

The writ of error should be dismissed.

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Of Counsel with the Defendants in Error.

NOTE.—If the amendments to the bill in the statute are to be considered by the court as public documents, we would refer to the report on which the bill was passed, setting forth that Price had special power to raise money for the fleet on drafts drawn on the Department, and that his successor having no such power, he advanced his own money to meet the necessities of the captain commanding, and at his solicitation.

The claim might equitably be made that the power to borrow included that of making advances to the fleet itself.